

**ITT Automotive, a division of ITT Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO.** Cases 7-CA-37082(2), 7-CA-37367, 7-CA-37367(2), and 7-RC-20273

September 30, 1997

**DECISION, ORDER AND DIRECTION OF  
SECOND ELECTION**

BY CHAIRMAN GOULD AND MEMBERS FOX  
AND HIGGINS

On July 17, 1996, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an exception and a brief in support, and a brief in answer to the Respondent's exceptions. The Union filed a brief in response to the Respondent's exceptions. The Respondent also filed a brief in answer to the General Counsel's exception, and briefs in reply to the General Counsel's and the Union's answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs<sup>1</sup> and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions<sup>3</sup> and to adopt the recommended Order, as modified.

We grant the General Counsel's exception to the judge's failure to make a finding that the Respondent violated Section 8(a)(1) by not adhering to the standards for questioning an employee set forth in *Johnnie's Poultry*.<sup>4</sup> The General Counsel asserts that although employee Pardonnet was given the assurances required by *Johnnie's Poultry*, the Respondent did not provide other specific safeguards set forth in that case, and thus violated Section 8(a)(1). We agree.<sup>5</sup>

<sup>1</sup> The Respondent requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup> In adopting the judge's conclusion that the Respondent unlawfully suspended employee Pardonnet, we find it unnecessary to rely on the judge's consideration of what he termed "apparent discriminatory actions taken against [Pardonnet] before the settlement agreement." We also correct the judge's inadvertent error of referring to discriminatee Benita Pardonnet as "Venita."

<sup>4</sup> 146 NLRB 770 (1964), enf. denied on other grounds 344 F.2d 617 (8th Cir. 1965).

<sup>5</sup> In finding this violation, we rely on the judge's specific rejection of the Respondent's challenges to Pardonnet's credibility and on the fact that her testimony on this issue was uncontradicted. We therefore find it unnecessary to draw any inference from the failure of the Respondent's counsel to testify.

In *Johnnie's Poultry*, the Board set forth the safeguards designed to minimize the coercive impact of employer interrogations to ascertain necessary facts from employees to prepare the employer's defense for trial. Certain verbal assurances are necessary to inform the employee of the nature of the questioning, that no reprisals will take place, and that participation is voluntary. In addition, the Board requires that the questioning must occur

in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees.<sup>6</sup>

When an employer transgresses the boundaries of these safeguards, it loses the benefits of the privilege. We find that certain questions asked by the Respondent's counsel of Pardonnet at the May 10, 1995 interview violated the Act because these boundaries were transgressed.

The facts surrounding the questioning of Pardonnet are not in dispute. The issues raised by the objections and complaint involved, inter alia, preelection threats of loss of jobs, threats that bargaining would be futile, requests that employees wear antiunion buttons, and a postelection threat to a union observer. The Respondent's counsel met with Pardonnet on May 10, 1995. They advised her that they were attorneys and that they were investigating objections and unfair labor practice charges filed against the Respondent. They informed her that no reprisals would be forthcoming, and that her participation was voluntary.

Later in the meeting, they asked Pardonnet the following questions: (1) whether employees at union meetings discussed incidents where supervisors asked employees to wear antiunion buttons; (2) whether any employees who wore "no" buttons actually supported the Union, or if any employees who wore "yes" buttons were actually against the Union; (3) why employees thought they needed a union at ITT and what had gone wrong; (4) if any employees were taking notes of events at the plant and if they were being discussed at union meetings; and (5) if any employees were taking notes about incidents with management and if they were discussed in union meetings.

We find that these questions exceeded the legitimate purpose of preparing the Respondent's case for trial, pried into matters beyond the legitimate scope of the interview, and impermissibly infringed on employees'

<sup>6</sup> Id. at 775 [fn. omitted].

Section 7 rights. *Adair Standish Corp.*<sup>7</sup> The question concerning whether any employees who wore “no” buttons actually supported the Union and whether any employees who wore “yes” buttons were actually against the Union, and the question as to why employees thought they needed a union at ITT and what had gone wrong, were impermissible inquiries aimed at eliciting information concerning employees’ union sentiments. Questions concerning whether certain issues had been discussed at union meetings were also unrelated to the charges and objections at issue. Accordingly, we find that the Respondent violated Section 8(a)(1) by questioning Pardonnet in this way.

### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, ITT Automotive, a division of ITT Corporation, Oscoda, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(e) and reletter the subsequent paragraphs accordingly.

“(e) Conducting interviews with employees in preparation for a hearing while exceeding the legitimate scope of inquiry for such interviews so as to unnecessarily and coercively intrude into the Section 7 activities of employees.”

2. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the election held in Case 7-RC-20273 is set aside, and that case is severed and remanded to the Regional Director to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

[Direction of Second Election omitted from publication.]

<sup>7</sup> 290 NLRB 317, 331 (1988), *enfd.* in relevant part, 912 F.2d 854 (6th Cir. 1990).

### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union  
To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT predict the loss of jobs from strikes, job transfers, or plant closure without objective foundation if you vote for representation by the United Auto Workers (UAW).

WE WILL NOT tell you that bargaining would be futile if you vote for UAW.

WE WILL NOT ask you to wear an antiunion button.

WE WILL NOT threaten to take any action against you for union activity.

WE WILL NOT conduct interviews with you in preparation for a hearing while exceeding the legitimate scope of inquiry for such interviews so as to unnecessarily and coercively intrude into your Section 7 activities.

WE WILL NOT suspend you or put you on probation for union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Benita Pardonnet whole for any loss of earnings and other benefits resulting from her suspension, plus interest.

WE WILL, within 14 days from the date of the Board’s Order, remove from our files any reference to the suspension and probation of Benita Pardonnet, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the suspension and probation will not be used against her in any way, including any request for reemployment.

ITT AUTOMOTIVE, A DIVISION OF ITT  
CORPORATION

*George M. Mesrey, Esq.*, for the General Counsel.

*Curtis L. Mack and Amy J. Zdrovecky, Esqs.* (*Mack, Williams, Haygood & McLean*), of Atlanta, Georgia, and *Robert D. Harris, Esq.*, of White Plains, New York, for the Respondent.

*Michael L. Fayette, Esq.*, of Grand Rapids, Michigan, for the Charging Party.

### DECISION

#### STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried in Tawas City, Michigan, on February 21–23, 1996. The charges were filed by the Union (UAW) against the Company, ITT Automotive, a division of ITT Corporation (ITT), in Case 7-CA-37082(2) on April 19, 1995<sup>1</sup> (amended June 5), Case 7-CA-37367 on June 23, and Case 7-CA-37367(2) on July 3. The consolidated complaint

<sup>1</sup> All dates are in 1995 unless otherwise indicated.

and Report on Objections to Election in Case 7-RC-20273 was issued on October 10.

The Company employs over 900 employees in its automotive parts plants in Oscoda, Tawas City, and East Tawas in northeast Michigan. Opposing UAW's organizing drive before the March 30 election, the Company engaged in a campaign that was obviously intended to create an atmosphere of fear of the loss of jobs in the seashore towns.

Among its other preelection literature, the Company distributed a total of 93 leaflets (160 pages) describing 8 lost strikes by UAW, IAM, Paperworkers, and Rubber Workers in the past 19 years at five different ITT divisions and three other employers. Meanwhile the Company brought employees from its Mexico plant to videotape jobs and displayed large "MEXICO TRANSFER JOB" signs on machines and equipment awaiting shipment to Mexico.

Demonstrating the ease of transferring jobs, the Company rented four large trailers and practically emptied the Oscoda plant 5 overnight. It loaded the trailers and parked them in the employee parking lot while the plant floor was being resurfaced—instead of following its prior practice of moving the equipment to one side of the plant and then to the other to resurface the floor. At the Tawas City facility, by the a main entrance door during a shift change, a supervisor parked his pickup truck loaded with three of the plant's "boards" (portable work stations for assembling auto parts), further demonstrating the ease of transferring the work.

On March 27 (3 days before the election) the Company distributed the final four of the strike leaflets (totaling 45 pages), along with a letter signed by General Plants Manager Gale Spallinger, stating that the Company in the last year "increased enrollment by over 250 employees" in the Iosco County plants, "adding meaningful jobs and stability." The leaflets concern UAW's 1976 and 1978 strikes and IAM's 1979 strike in different divisions of the Company and UAW's 1986 strike against another employer (Guardian Industries).

A 15-page leaflet concerning UAW's 1976 strike at its former circuit control plant at Petoskey, Michigan states on page 13: "The Union Lost in Petoskey—DON'T YOU BE A LOSER HERE AT ITT AUTOMOTIVE BAYLOCK VOTE NO" and on page 15: "The *only* guarantee against this happening here at ITT Automotive Baylock is . . . TO VOTE NO."

Although the 1979 strike at the ITT Stover Tanks plant in Freeport, Illinois, was an IAM (not a UAW) strike, a May 27 10-page leaflet concerning that strike concludes, "DON'T PUT YOUR JOB IN THE HANDS OF THE UNION VOTE NO."

The preelection speeches being made by management officials culminated on March 28 with a written speech by Ralph Iorio, president of the Company's fluid handling division (12 facilities in the United States, Canada, and Mexico)—discussing the "*viability* [emphasis added] of our plants in Tawas City, East Tawas, and Oscoda." In the 10-page speech, in which he discussed the global economy and the Company's making the determination "where we can be competitive," he referred to its "growing operation in Mexico" and stated that "We cannot survive here if we continue to lose product . . . even to our own plant in Mexico."

After mentioning three strikes the Company had described in 122 pages of campaign literature, Iorio told the employ-

ees: "Look at our own ITT Automotive plants of Ithaca, Rochester and Williamston all in Michigan, all closed and all affecting hundred of former UAW members. . . . I don't know what this union would do when we say 'No' to demands we consider unreasonable. In some negotiations which we have had, the Union has called a strike. . . . In some cases, we have permanently replaced striking employees. In other cases, we have moved the work and closed the plant especially where light assembly or manual work was being done and the work was easily transferred. . . . DON'T—LET IT HAPPEN HERE."

A large "don't want" and "don't need" the UAW sign, stating "I NEED MY JOB!" was posted on windows of management offices at the Oscoda facility.

The General Counsel contends that Iorio's "repeated references to plant closing and the inevitability of strikes implied, without any objective foundation, that a vote for union representation would lead to plant closure and/or loss of jobs" and was "an exercise in futility."

The Union contends that Iorio's speech, referring to the transfer of jobs to Mexico, "summarizes all of the objectionable acts committed by ITT during the critical period. . . . This rhetoric alone is enough to ensure that the employees understand that if the union gets in, work is going to Mexico. . . . all a part of a central theme of the Employer's campaign—if the UAW wins, the employees lose their jobs."

The Company contends that the speech of Iorio, as well as the speeches of other officials, "are protected" by Section 8(c) of the Act, which "permits an employer to present its views regarding unionization." Ignoring the admission by one of its own supervisor witnesses that she herself was "concerned" about the plant closing if the Union won the election—and despite evidence of employee impression from Iorio's speech "that the plant would close if the union won the election"—the Company contends that neither the General Counsel nor the Union "offered any evidence to show that any employees were affected" by the rhetoric.

Although the evidence is undisputed that a stack of the "MEXICO TRANSFER JOB" signs was displayed on a supervisor's desk, the Company contends that there is no evidence that the Company prepared the sign or attached it to the equipment and "it must be assumed that it was prepared by a third party." Regarding what it asserts is the Union's argument that "in an attempt to coerce its employees," it "subtly threatened to move work to its Mexico facility" and "created the impression of packing up its plant at night and posted various flyers throughout the plant" to "maximize its threats," the Company contends that the Union "failed to establish that any of these incidents occurred or that they were authorized or ratified."

The Company also contends that the Union failed to show that these incidents "reasonably affected the results of the election"—despite the testimony that at the time of the plant-pack-up incident, a union supporter told another supporter that "with the threats that were being made about moving the company to Mexico . . . they proved to him that they could pack up and move overnight," and "he had to back out of" supporting the Union.

The primary issues are (1) whether Iorio's speech to employees at the Oscoda, Tawas City, and East Tawas plants on March 28 (2 days before the election), threatened employ-

ees with strikes, plant closings, and bargaining futility, coercing the employees in violation of Section 8(a)(1) of the National Labor Relations Act and (2) whether the Company conducted “a campaign of fear and intimidation through constant predictions of violence, strikes, loss of customers and economic detriment which the employer insinuated would inevitably result from a union victory”—interfering with the employee’s free choice of representation and requiring the March 30 election to be set aside and a new election held.

Other issues are whether the Company engaged in additional coercive conduct before and after the election in violation of Section 8(a)(1), suspended a union supporter after the election in violation of Section 8(a)(3) and (1), and also engaged in additional objectionable conduct that requires the election to be set aside.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Company, and the Union, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Company, a corporation, manufactures automotive parts at its facilities in Oscoda, Tawas City, and East Tawas, Michigan, where it annually receives goods valued over \$50,000 directly from outside the State. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES AND OBJECTIONABLE CONDUCT

#### A. *The Company’s Loss-of-Jobs Campaign Theme*

##### 1. Background

The Union began the organizing drive in September 1993. On February 11, 1994, it filed a petition for an election, which was delayed by earlier charges the Union filed in Cases 7–CA–35130, 7–CA–35379, 7–CA–35535, and 7–CA–35844. (G.C. Exh. 1(p), p. 6; C.P. Exh. 1; and R. Exh. 11, p. 87.)

On June 3, 1994, the Company signed a settlement agreement with a notice, promising in part that it “WILL NOT” (a) “coercively interrogate” employees; (b) “create the impression” of surveillance; (c) “threaten employees with discharge, discipline, loss of seniority or jobs, plant relocation or closure”; (d) inform employees “it would be futile” to select a union; (e) promise benefits “if employees repudiate the Union”; (f) maintain or enforce any rules that prohibit “distributing union literature in the lunchrooms” or “posting union literature on employee bulletin boards”; (g) “restrict our employees’ conversations, restrict their mobility or monitor their activities more closely because of their support for the UAW”; or (h) “make negative references to employees in their progress reviews” for supporting the Union (C.P. Exh. 1, p. 3).

The settlement agreement does not include a nonadmission clause. Instead it provides in a reservation clause, in part (C.P. Exh. 1, p. 1):

The General Counsel shall have the right to use the evidence obtained in the investigation of the above-captioned case in the litigation of any other unfair labor practice case; and any judge, the National Labor Relations Board, or any other tribunal may rely on such evidence in making findings of fact or conclusions of law.

#### 2. Preelection campaign literature

The Company (the ITT Automotive division of ITT) comprises 12 fluid handling facilities (those in Oscoda, Tawas City, and East Tawas, 7 others in the United States, 1 in Canada, and 1 in Mexico), and 4 brake systems, 6 electrical, 6 motors & actuators, 5 NAAD, 4 precision die casting, and 7 structural systems facilities (R. Exh. 50).

Evidently in the absence of strike activity at any of these 44 facilities, the Company went back to a 1976 strike at its former circuit control facility in Petoskey, Michigan, and outside the Company to other divisions of ITT and to non-ITT employers for its extensive campaign literature warning employees of a strike if they voted for union representation.

Copies of its campaign literature that the Company produced at the trial (C.P. Exh. 5) include a total of 93 leaflets (160 pages) describing eight lost strikes in the 19 years before the March 30, 1995 election. The strikes were UAW, IAM, Paperworkers, and Rubber Workers strikes at five different ITT divisions and three other employers.

There are 86 leaflets (totaling 88 pages) of newspaper clippings and press releases describing, sometimes daily, developments in a 1990 UAW strike at the ITT Electron Technology Division in Easton, Pennsylvania. A 25-page leaflet of newspaper clippings describes a Paperworkers strike, also in 1990, at the ITT Rayonier’s pulp mill in Hoquiam, Washington. (C.P. Exhs. 5a–5ffff and 5gggg.)

On March 22, the week before the election, the Company distributed a February 4 newspaper clipping reporting that talks to settle UAW’s strike at Caterpillar “fold” and a leaflet of newspaper clippings concerning a Rubber Workers’ strike at Bridgestone/Firestone in Akron, Ohio. The next day, March 23, the Company distributed a leaflet, urging “FOR NO STRIKES VOTE NO UNION.” (C.P. Exhs. 5LLLL, 5mmmm, and 5qqqq.)

On March 27 (3 days before the election) the Company distributed the four final leaflets that concern strikes called in 1976, 1978, 1979, and 1986. One is a 15-page leaflet concerning UAW’s March 10, 1976 strike (19 years earlier) at its former circuit control plant in Petoskey, Michigan. The leaflet states on page 13: “The Union Lost in Petoskey—DON’T YOU BE A LOSER HERE AT ITT AUTOMOTIVE BAYLOCK VOTE NO” and on page 15: “The *only* guarantee against this happening here at ITT Automotive Baylock is . . . TO VOTE NO.” (C.P. Exh. 5pppp.)

The second is a leaflet concerning UAW’s September 9, 1978 strike at the ITT Thompson Industries factory in Waverly, Ohio. The third is a leaflet attaching 17 pages of newspaper clippings concerning UAW’s May 15, 1986 strike at another employer, Guardian Industry, a glass plant in Monroe, Michigan. The fourth March 27 leaflet concerns a 1979 strike at the ITT Stover Tanks plant in Freeport, Illinois. Although this was an IAM (not a UAW) strike, the 10-page leaflet concludes, “DON’T PUT YOUR JOB IN THE HANDS OF THE UNION VOTE NO.” (C.P. Exhs. 5nnnn, 5oooo, and 5ccccc.)

Accompanying the four March 27 leaflets was a letter signed by Gale Spallinger, the general plants manager of ITT Automotive North America. The letter states that, "We have increased enrollment by over 250 employees" at the three Iosco County facilities in the last year and that "ITT has shown its commitment to you and Iosco County by adding meaningful jobs and stability." It refers to the Petoskey and Guardian Industries strike leaflets and states: "Our working together has made our plants a success." (C.P. Exhs. 5iii and 5pppp.)

Earlier that month, on March 6, the Company distributed a four-page "GET ALL THE FACTS" leaflet, which states in part that "ITT Automotive is not going to give in to unreasonable demands" and "The only thing [UAW] could do about it is STRIKE." It also states that the Company "would bargain in good faith. But we would bargain very hard! You have no guarantee that you would end up with as good a wage and benefit package as you have now!" (C.P. Exh. 5uuuu.)

None of the literature reveals any "unreasonable demands" that UAW had made or was likely to make, causing a strike. The statement about good-faith bargaining in the March 6 leaflet—the Company's only indication in all its preelection campaign literature that it would be willing to engage in "good faith" bargaining—was accompanied by the emphasized warning that it would bargain "very hard!" and the further emphasized warning that the employees may not "end up with as good a wage and benefit package as you have now!"

I find that this good-faith bargaining statement, in the context of the two warnings and the Company's extensive strike literature, reasonably tended to convey to employees the following message. The Company may regard any proposed improvement in the present wage and benefit package to be an "unreasonable" demand, giving the employees no alternative to risking their jobs by going on strike for any improvement.

### 3. Job transfers to Mexico

Before the election the Company displayed large "MEXICO TRANSFER JOB" signs on shrink-wrapped pallets of machinery in plants 6 and 7 and on a shrink-wrapped aluminum air line assembly table in the employee parking lot at the Oscoda facility, awaiting shipment to the Company's plant in Guaymas, Mexico (Tr. 395–409, 415, 444–446, 476, 479; R. Exh. 50).

The signs, on bright pink paper with black lettering—"MEXICO" in 3-3/4" type and "TRANSFER JOB" in 1-3/4" type, with smaller type at the bottom—read (C.P. Exh. 7; Tr. 396):

MEXICO  
TRANSFER JOB  
PER SCHEDULE  
THIS JOB WILL TRASNSFER [sic]  
WHEN BANK IS COMPLETE.

The Company contends in its brief (at 37) that "Because there is no evidence that the Employer prepared this flier, it must be assumed that it was prepared by a third party." Assembler Wayne Yoesting, however, credibly recalled that a stack of the "MEXICO TRANSFER JOB" signs was displayed at the time—about 2 months before the election—on

the supervisor's desk, located in plant 7 near the main aisle leading through the overhead door into plant 6 (Tr. 399–403, 407–408).

When a group of employees were standing around the desk before their shift, talking about what the signs might mean, Yoesting asked Supervisor William Wyrock (who did not testify) why the signs were there. Wyrock gave no explanation, but acknowledged them as company signs by telling him "something more or less like mind my own business" and "To read it and it should be self-explanatory." (Tr. 407–408, 433.)

Although the signs state that the job would be transferred to Mexico "when bank is complete" (meaning when the inventory of those parts was built up), the signs were displayed on the machines and assembly table *after* production of the parts had ceased. The signs were on shrink-wrapped pallets of machinery awaiting shipment in plants 6 and 7 and on the shrink-wrapped table, which had been moved to the employee parking lot where the sign was "in plain view." (Tr. 412–414, 444–446.)

I infer that the purpose of displaying the "MEXICO TRANSFER JOB" sign on the machines and table was to dramatize during the election campaign the sending of jobs to Mexico. I discredit General Supervisor Richard Karbowski's claim, "I don't think I even saw" it. (Tr. 604.) From his demeanor on the stand he did not appear to be a candid witness.

Also before the election, the Company brought employees from its Mexico plant to videotape jobs both at the Oscoda and Tawas City facilities and was announcing the transfer of jobs to Mexico in employee meetings (Tr. 395, 410, 443, 494–495, 509–513).

Previously at the Oscoda facility, as credibly testified by master craftsman Raymond Marchionna (who has worked there 9-1/2 years), the Company had made a practice when resurfacing a plant floor to "shove half" of the equipment "over to one side, resurface that area, wait a day or two for it to dry and then shove everything over to the other half" to finish the resurfacing (Tr. 766–767).

During the election campaign, when the Oscoda plant 5 floor was scheduled to be resurfaced, the Company arranged for four "huge" rented storage trailers to be delivered to the facility on the night before the resurfacing was to begin. The trailers were then loaded overnight and parked in the employee parking lot. This was the first time that the Company rented trailers to be brought in to vacate a plant for resurfacing. (Tr. 656, 669–671, 679–680.)

By the next morning, about 80 percent of the equipment had been loaded onto the trailers. The whole floor was empty, except for four large presses and for equipment moved to one end of the plant under a mezzanine. The painting contractor resurfaced the empty area, then returned and resurfaced the remaining area. (Tr. 656–659, 767; R. Exhs. 47–53.)

The next morning when the resurfacing began, after the overnight loading of the trailers, plant 6 employee Scott Mead thought that they had "wiped the whole" plant 5 clean, taking "all of the machinery out." From his viewpoint in plant 6, which is separated from plant 5 by a fire wall and a large overhead door, he did not see the remaining presses and the equipment moved under the mezzanine. (Tr. 447–

448, 480.) Karbowski admitted that "It looked moved out." (Tr. 621.)

Mead credibly testified about the comment of one union supporter (Tr. 449-450, 483):

I had a supporter come up to me, and they were aware that they were going to redo the floors, and with the threats that they were [making] about moving the company to Mexico, this employee told me they proved to him that they could pack up and move overnight, and he told me that he had to back out of [the Union].

...  
Q. [BY MR. MACK on cross-examination] But everybody knew why these machines were moved out there, to resurface building 5.

A. Well, the employee that I stated earlier, it was a shock to him that the machines were being taken out and that they did not know that the machines were going out of the building.

Q. But they knew that the . . .

A. And the next day when they came in and the machines were gone, yeah, they knew.

At the Tawas City plant 2, the Company demonstrated the ease of transferring jobs in a different way. There the employees assemble air vacuum harnesses, working at portable stations or "boards" that contain all the testers and compartments for the components and places for glue, clips, and tape wraps for each part. The boards are kept on the plant floor or in the adjoining warehouse area for use when the customer needs replacement parts. (Tr. 491-494, 498-507, and 515-521.)

One afternoon during the election campaign, assembler Karen Richardson saw three of the boards loaded on Maintenance Supervisor Gary Simmons' three-quarter ton pickup truck, which was parked by the main entrance door at shift change. Simmons was "standing at the back of his truck." Being curious, Richardson waited and watched for half an hour and Simmons remained standing there "the whole time." Richardson credibly testified on cross-examination: "I think [the Company] was trying to show us how easy it is to remove boards, that they can just use a pickup truck." (Tr. 495-498, 501-502, 516-519.)

Simmons did not testify and the Company offers no explanation for his conduct.

#### 4. Posted "I NEED MY JOB!" sign

The Company's loss-of-jobs campaign theme was further extended by the posting of "I NEED MY JOB!" signs at the large Oscoda facility.

A majority of the bargaining unit employees work in the four plants (numbered 4 through 7) at the Oscoda facility (Tr. 526-527). A main aisle connects the four plants, through overhead doors in the fire walls separating them. (Tr. 235; C.P. Exh. 6.) The lunchroom is on the west side of plant 6 below a mezzanine where the conference room, upstairs lab, and six or seven management offices (including Karbowski's office) are located. (Tr. 382-384, 538-540.)

The 8-1/2" by 11" sign, with black lettering on white paper and with a diagonal line through an encircled "UAW," reads (C.P. Exh. 8):

DON'T WANT IT  
UAW  
DON'T NEED IT  
I NEED MY JOB!

About a month before the election, as plant 6 employee Mead credibly testified, he first saw the signs "taped in two or three different windows" in management offices on the balcony "and I believe I remember seeing one" in the Company's glass-covered and locked bulletin board near the lunchroom. (Tr. 450-453.)

Mead (who impressed me most favorably by his demeanor on the stand as a truthful witness) further testified that the signs "had been taped in their office windows facing out to the floor," in "plain view" of people in the plant. He did not see anyone from management or supervision putting up the signs, but "the employees can't go up there and put them up. . . . they're not allowed up there without management personnel." (Tr. 451-454.)

Karbowski—who as found gave discredited testimony that "I don't think I even saw" the "MEXICO TRANSFER JOB" sign that was displayed on shrink-wrapped machines in plants 6 and 7 (under his supervision)—first positively denied ever seeing the "I NEED MY JOB!" sign (Tr. 526, 565). On cross-examination, however, he at least implied that he had seen it.

When asked on cross-examination if he was positive that the sign was not posted during the election campaign on employee Ellen Macklem's window in the upstairs lab, Karbowski answered, "No, I'm not positive on that one" because "I don't go that way that often to the south end steps." He then admitted yes, it "could have been posted" at her window. (Tr. 645-646.)

Floor Supervisor Sandra Lawlor likewise denied seeing the sign. According to her, she saw a similar sign without the words, "I NEED MY JOB!," hanging in the upstairs lab window where hourly employee Macklem works. (Tr. 730-731, 732-733.)

Lawlor, as well as Karbowski, did not appear to be a candid witness. I discredit their denials and find that the Company's "I NEED MY JOB!" sign was posted during the latter part of the election campaign at least on two or three different windows of upstairs management offices, if not also on a company bulletin board near the lunchroom.

#### 5. Preelection speeches

##### a. Speeches by Davies and Treglown

Robert Davies (who did not testify) is manager of Fluid Handling Systems at the corporate headquarters in Auburn Hills, Michigan. In his approximately 30-minute speech to employees he talked about ITT plants closing, profitability, and hard bargaining. It is undisputed that when he spoke at the East Tawas plant about the closing of a particular union plant because it was not profitable, employee inspector Sherry Spalding asked was it not true "that you closed" it because it was merged with another plant. He admitted this was true. (Tr. 134, 138-139; R. Exh. 50.)

At the Oscoda facility, as assembler Venita Pardonnet reported to the company counsel in her May 10 pretrial statement (G.C. Exh. 13, p. 6; R. Exh. 9, p. 2), Davies stated in a speech that

. . . if the 3rd party [the Union] got in and the Company did not make a profit he Bob [Davies] would shut the plant down. Bob said IF we did not believe [it], he could show us the 3 plants where the third party got in and the Company did not make a profit and he shut them down.

It is undisputed, as Pardonnet credibly testified, that Davies also said that “just because we had big equipment and a new expansion in Oscoda, not to think that he wouldn’t shut that one down” (if it became unprofitable) (Tr. 231).

George Treglown (who also did not testify) is the human resources manager. It is undisputed, as Spalding testified, that at the East Tawas plant Treglown told employees that the Union came in at different places where he had worked and the plants closed (Tr. 147). Spalding did not, however, hear anyone directly state that the plant “would close just because the Union won the election” (R. Exh. 16, p. 4).

It is also undisputed that in one of Treglown’s speeches at the Oscoda facility, as employee Pardonnet credibly testified (Tr. 197–198, 318; G.C. Exh. 13, pp. 6–7; R. Exh. 9, p. 2):

George [Treglown] stated that if we voted the union in that we would probably have to go to Detroit to negotiate a contract. That during this time that we [on the negotiating committee] would not be receiving any pay from the company or the union.

That we get up there and the company would bargain hard that we would get frustrated because we were getting no pay and *things would disintegrate* [meaning the “whole negotiating process”].

. . . .  
That the company would negotiate real hard with us, and that *everything would just bog down* and we would all get frustrated and *it would just disintegrate*. [Emphasis added.]

#### b. Ralph Iorio’s March 28 speech

##### (1) Setting of the speech

Ralph Iorio is president of the Company’s fluid handling division, which consists of 12 facilities in the United States, Canada, and Mexico, including the three facilities located in the seashore towns on Lake Huron in Iosco County, north-east Michigan (R. Br. at 26; R. Exh. 50; C.P. Exh. 5pppp, p. 1).

On March 28, 2 days before the election, President Iorio gave a 10-page written speech at the three facilities (Tr. 92, 515; G.C. Exh. 2). The speech followed the Company’s distribution of a total of 93 leaflets of campaign literature (160 pages) describing eight lost strikes in the last 19 years. As found, the strikes were UAW, IAM, Paperworkers, and Rubber Workers strikes at five different ITT divisions and three other employers. He gave the speech the day after the Company distributed its four final leaflets (45 pages), concerning strikes called in 1976, 1978, 1979, and 1986—two UAW strikes at different ITT divisions and one UAW and one IAM strike at other employers (C.P. Exh. 5).

Iorio’s speech at the three plants also followed the repeated references to plant closings in speeches by other officials. It likewise followed the announcements at employee

meetings of job transfers to Mexico, the Company’s bringing employees from its Mexico plant to videotape jobs, and the displaying of large “MEXICO TRANSFER JOB” signs on shrink-wrapped machines and equipment being sent to its Mexico plant.

The speech by this official from the corporate headquarters in Auburn, Michigan also followed the Company’s practically emptying plant 5 overnight onto rented trailers and its parking, by the plant 2 main entrance at shift change, a pick-up truck loaded with three of the plant’s work stations, demonstrating the ease of transferring jobs. The “I NEED MY JOB!” sign was posted on windows of management offices at the Oscoda facility.

##### (2) Climax of loss-of-jobs campaign theme

President Iorio began his March 28 speech with an ominous implication that the very survival of the thriving, expanding plants was at stake, climaxing the Company’s loss-of-jobs theme in the election campaign (G.C. Exh. 2, p. 1):

We called all of you together this [morning, afternoon, evening] to talk about a subject that is important to all of us. That is the operation and *viability* of our plants in Tawas City, East Tawas, and Oscoda. [Emphasis added.]

In the 10-page speech, Iorio next discussed (pp. 1–3) the global economy and stated that its products “must be produced where we can be competitive *and the Company makes this determination* [emphasis added].” He continued:

You should know that whenever we become non-competitive in a product at these plants, our competition—worldwide—is waiting to gobble it up. We are fortunate to have a growing operation in Mexico headed up by one of our own—Bob Zimcosky—where we are able to produce some products when we become non-competitive here in Northern Michigan. We are now trying to develop our plants in Fluid Handling to enable us to move product from one plant to another; so if one plant is unable for any reason to produce the product we can move it to our own plants and not lose it to competition.

He cited (pp. 2–3) examples of products lost to competition, stated that customers “have continued to drive down the price they pay us,” yet “our wage and benefit package at these plants compares very favorably to other employers,” contrary to what “the UAW organizers are trying to convince you.” He stated (p. 4):

We cannot survive here if we continue to lose product . . . even to our own plant in Mexico.

We have the necessary ingredients for survival here. We have an *excellent work force* in both hourly and salary. Since these plants began operation here in Iosco County, the Company has grown from as few as 20 to over 900 employees. [Emphasis added.]

Iorio later stated (p. 5), “I know the UAW made you a lot of promises because they always do.” He then mentioned three UAW strikes (in 1976, 1986, and 1990) that the Com-

pany had described in 122 pages of campaign literature and added (pp. 5–6, 8):

Look at our own ITT Automotive plants of Ithaca, Rochester and Williamston all in Michigan, all closed and all affecting hundred of former UAW members.

I have run a number of plants during my career, union and nonunion, and, wherever there has been a union, sooner or later there were problems—problems that ultimately affect the efficiency of the plant. What we don't need here are more problems.

Iorio nowhere stated in the written speech that the Company would bargain in good faith to reach an agreement if the Union was selected. Instead he spoke only of a breakdown in bargaining when the Company says “No,” stating (p. 9):

I don't know what this union would do when we say “No” to demands we consider unreasonable. In some negotiations which we have had, the Union has called a strike. . . . In some cases, we have permanently replaced striking employees. In other cases, we have moved the work and closed the plant especially where light assembly or manual work was being done and the work was easily transferred. You know what has happened at some ITT plants where there were strikes.

#### DON'T—LET IT HAPPEN HERE.

I can't think of one example where a union has made a plant more productive, more efficient, or more secure. Even the existence of a union at a plant makes our customers nervous because they know that, whenever there are unions, there can be strikes—strikes which impact their ability to receive the product. That's the reason they insure that they can move the product to other plants.

#### DON'T LET THE UAW CREATE PROBLEMS FOR ALL OF US—VOTE “NO” ON MARCH 30TH.

##### (3) Veiled prediction of job losses

Read closely, President Iorio's lengthy speech does not contain any explicit threats to the employees' jobs at the Company's Oscoda, Tawas City, and East Tawas plants if the employees selected the Union to represent them.

I find, however, that this speech about the “viability” of the three plants—particularly in the context of the Company's other speeches, literature, and conduct—was a veiled prediction of job losses from strikes, job transfers, or plant closure.

The evidence shows that the Company soon learned that the speech left the impression, even on Union Organizer Pardonnet, that the plant would close if the employees selected the Union. On May 10, soon after the election, the Company's counsel took Pardonnet's statement in preparation for trial. The counsel gave her the assurances required in *Johnnie's Poultry*, 146 NLRB 770, 774–775 (1964). (Tr. 203–205, 247–250.)

When writing the nine-page handwritten statement, counsel Curtis Mack omitted what Pardonnet said about the impres-

sion Iorio gave in his speech. He wrote only that “Mr. Iorio never threatened at anytime to close the plant.” (G.C. Exh. 13, pp. 5–6; R. Exh. 9, p. 2.)

After Pardonnet read over the entire statement, which concluded with a certification of its correctness, the counsel told her (and added at the end of the statement) that “I could make any changes or correction I desired to ‘make.’” While reading over the statement, she had told the counsel that something on another subject was missing and asked why it was not in there. Receiving no response, she “did not pursue it,” not knowing at that time “whether I could tell them that I wanted it in there.” (Tr. 263–265, 268–274; R. Exh. 8, p. 7.)

When advised that she could make changes, Pardonnet had the counsel add the omitted part about the impression Iorio gave in his speech. He wrote the following in the left margin on page 6 of the statement (G.C. Exh. 13):

Mr. Iorio emphasized things, he gave the impression that the plant would close. He never said the plant would close if the Union won the election, but I left *the meeting with the impression that the plant would close* if the union won the election. [Emphasis added.]

The evidence also shows that one of the Company's supervisor witnesses was under a similar impression. Floor Supervisor Lawlor admitted on cross-examination that “Yes,” she was “concerned” that ITT might close the plant if the UAW won the election. (Tr. 730.)

#### 6. Contentions of the General Counsel and the Union

The General Counsel contends in his brief (G.C. Br. 8) that Iorio's speeches went beyond the scope of Section 8(c) of the Act. “His repeated references to plant closing and the inevitability of strikes implied, without an objective foundation, that a vote for union representation would lead to plant closure and/or loss of jobs.”

The General Counsel also contends (G.C. Br. 5) that Treglown's comments “constitute nothing less than a warning that employees' organizing efforts and the possible selection of the Union as their bargaining agent would be an exercise in futility because, as Treglown put it, [the Company's] conduct would cause the entire negotiation process to ‘disintegrate.’”

The Union, in support of its election objections, contends in its brief (U. Br. 8–10):

We have now entered the post-NAFTA era of employer threats and intimidation. It appears that the newest and most effective way for employers to instill fear into the minds of employees is to threaten that jobs will be lost to Mexico if union is voted in. . . . [The Company] did not claim, or even purport to claim, that the move to Mexico would be due to economic hardships beyond its control. In fact, the [Company] made certain that the employees were positive that if the Union won the election, their jobs were going to Mexico.

Regarding the Company's 160 pages of campaign literature, including 86 leaflets (totaling 88 pages) of newspaper clippings and press releases on the 1990 strike in Easton, Pennsylvania, the Union contends (at 13–14):

The employees were barraged with ongoing accounts of striking unionized plants in Michigan as well as other States. . . . They received a daily update of a long hard strike in Pennsylvania where permanent replacements took the jobs of striking employees. Nearly every day employees were given headlines to read of strike violence and plant closings. . . . Even the signs in management office windows warned employees that they would lose their jobs if they chose to vote for the Union.

. . . . This literature gave words to all of the innuendo and inferences present in management's antics. It is not coincidental that the news stories distributed by ITT would speak of job loss, and that a truck filled with ITT customers' boards would then be displayed in front of the employee entrance. Nor were the stories of plant closings and the loss of jobs unrelated to a plant-full of equipment found in the employees parking lot in rented trailers, ready for easy transport to other locations. Many of the news stories were specifically cited in Ralph Iorio's 25th hour speech, as well as the speeches of George Treglown and Robert Davies, and served as a reminder of the earlier threats. The [Company] made certain that every employee would believe that their job was in immediate jeopardy when the election occurred.

Regarding Treglown's assurance that the whole negotiating process would break down if the Union came in, the Union contends (U. Br. at 16) that the "totality of the circumstances in this case warrants a find that the comments regarding bargaining futility were objectionable." Regarding plant closings, it contends (U. Br. at 16):

Further, no evidence was offered by the [Company] that either Mr. Davies or Mr. Treglown based their comments of plant closings on objective facts or demonstrably probable consequences beyond the [Company's] control. Therefore, both Mr. Davies' and Mr. Treglown's comments in their captive audience speeches should be found objectionable.

Regarding President Iorio's captive audience speech 2 days before the election, the Union contends (U. Br. at 16-17):

Although this speech is just one of the many job loss messages communicated to employees by ITT management, the speech summarizes all of the objectionable acts committed by ITT during the critical period.

. . . . This rhetoric [of Iorio that "We cannot survive here if we continue to lose product . . . even to our own plant in Mexico"] alone is enough to ensure that the employees understand that if the union gets in, work in going to Mexico. These words just reiterated the message that management had hammered into the mind of the employees through clearing out plant 5 in the middle of the night, packing up large pieces of equipment with "MEXICO TRANSFER JOB" signs, and having [employees from the Mexico plant] videotaping the workers doing their jobs in order to make training videos. These acts were not accidental inferences; the tim-

ing was no coincidental. As the words of Ralph Iorio illustrate, these acts were all part of a central theme of the [Company's] campaign—if the UAW wins, the employees will lose their jobs.

Regarding Iorio's references to union promises, strikes, and plant closings, the Union contends (at 17-18):

Once again, the words themselves are objectionable threats. But in the context of the propaganda distributed to the employees by management, it is irrefutable that the message management is sending is that if the Union is voted in, the Union will strike and/or plant will close, but either way the employees will lose their jobs.

After citing Iorio's message that "In some case we have permanently replaced striking employees" and "In other cases we have moved the work and closed the plant" and his message, "DON'T LET IT HAPPEN HERE," the Union contends (at 18-19):

These were the words the employees were forced to listen to less than 48 hours before they had to walk . . . past the ["I NEED MY JOB!"] sign hanging in management's window as they went into the polls to cast their ballots. This atmosphere, created by management, was coercive and intimidating and the election should be overturned due to these severe violations of the Act.

## 7. Contentions of the Company

The Company asserts in its brief (at 4, 32) that "The General Counsel and the [Union] alleged that the [Company] threatened employees with strikes, plant closings, and bargaining with futility if the [Union] were elected" and that the Union also alleges that "through constant predictions of violence, strikes, loss of customers, and economic detriment," the Company "conducted a campaign of fear and intimidation," interfering with "the free and fair election."

In response, the Company contends (at 4) that it did not threaten its employees with strikes, plant closings or futility if the Union were elected, nor did it conduct a campaign of fear and intimidation to discourage support for the Union.

The Company further contends in its brief (at 27-30):

Nothing in Mr. Iorio's speech violates the Act. Mr. Iorio's speech as well as Mr. Treglown and Mr. Davies' comments are protected by 8(c) of the Act. . . . Section 8(c) permits an employer to present its views regarding unionization. . . . Similarly, an employer may discuss with employees the effects of unionization on its other plants, including a reference to shutdown of other plants.

. . . . The Board has held that an employer's statements regarding the breakdown of negotiations and the possibility of a strike in the absence of threats and other unlawful acts are protected by Section 8(c) of the Act.

Similarly, statements made by Mr. Iorio, Mr. Treglown, and Mr. Davies regarding the possible effects of unionization on [the Company's] plants were permissible under Section 8(c) of the Act. . . . [Iorio] never stated or implied that unionization played any

role in closing plants. Mr. Iorio said strikes were possible if the parties could not reach an agreement after good faith negotiations [although good faith bargaining was nowhere mentioned in his written speech in evidence, G.C. Exh. 2].

Neither General Counsel or the [Union] offered any evidence to show that any employees were affected by the [Company's] campaign rhetoric.

Regarding what it asserts is the Union's argument that "in an attempt to coerce its employees," the Company "subtly threatened to move work to its Mexico facility" and "created the impression of packing up its plant at night and posted various flyers throughout the plant" to "maximize its threats," the Company contends in its brief (at 34) that the Union "failed to establish that any of these incidents occurred or that they were authorized or ratified."

The Company also contends (at 35) that "even assuming arguendo that employees from [the Company's] Mexico plant were performing the videotaping [of employees performing their jobs], "the evidence is insufficient to establish an implied threat to transfer work to its Mexico plant if employees selected the Union."

The Company also contends in its brief (at 35-37) that the Union

... did not establish if [the "MEXICO TRANSFER JOB" sign] was observed during the critical period or if it was authored by [the Company] or some employee. Indeed, Mr. Yoesting could not recall if he observed this document attached to this equipment during the critical period or if he observed it prior to the filing of the petition.

Because there is no evidence that the [Company] prepared this flier, it must be assumed that it was prepared by a third party.

To the contrary, as found, employee Yoesting credibly recalled that about 2 months before the March 30, 1995 election (long after the February 11, 1994 filing of the petition) he saw the signs not only on shrink-wrapped pallets of machinery in plants 6 and 7, but also saw a stack of the signs displayed on Supervisor Wyrock's desk, where Wyrock acknowledged them as company signs by telling him "something more or less like mind my own business" and "To read it and it should be self-explanatory."

I reject this unsupported contention and also the Company's similarly unsupported contentions in its brief (at 39-42) regarding the overnight loading of plant 5 equipment in rented trailers, the supervisor's parking his pickup truck loaded with plant 2 "boards" at the main entrance at shift change, and the posting of the "I NEED MY JOB!" signs on the windows of management offices at the Oscoda facility.

#### 8. Supreme Court's standards

The Supreme Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618-620 (1969), established the standards for "balancing" an employer's Section 8(c) right—to express "any views, argument, or opinion" in communicating his views to his employees, so long as such expression contains "no threat or reprisal or force or promise of benefit"—with

the employees' right to self-organization, holding (emphasis added, footnotes omitted):

[A]n employer's rights cannot outweigh the equal rights of the employee to associate freely, as those rights are embodied in § 7 and protected by § 8(a)(1) and the proviso to § 8(c). And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the *necessary tendency* of the former, because of that relationship, to *pick up intended implication* of the latter that might be more readily dismissed by a more disinterested ear.

... Thus, *an employer* is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit." He may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be *carefully phrased* on the basis of *objective fact* to convey an employer's belief as to *demonstrably probable consequences beyond his control* or to convey a management decision already arrived at to close the plant in case of unionization. ... If there is any implication that an employer may or may not take action *solely on his own initiative for reasons unrelated to economic necessity and known only to him*, the statement is no longer a reasonable prediction based on available fact but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. We therefore agree with the court below that "[c]onveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof." ... As stated elsewhere, an employer is free only to tell "what he reasonably believes will be the *likely economic consequences of unionization that are outside his control*," and not "threats of economic reprisal to be taken solely on his own volition."

[T]he Board has often found that *employees, who are particularly sensitive to rumors of plant closings, take such hints as coercive threats rather than honest forecasts*.

... [An employer] can easily make his views known without engaging in "brinkmanship" when it becomes all too easy to "overstep and tumble [over] the brink." ... At the least he can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees.

#### 9. Other precedents

The Company primarily relies on the Board's decision in *UARCO, Inc.*, 286 NLRB 55, 56-58 (1987). There the administrative law judge found that in the employer's preelection campaign literature, which contained no assurance that it "would bargain in good faith or would not assume a regressive bargaining position," the employer "threatened employees with plant closure and the futility of selecting a bargaining representative."

The majority of the Board panel disagreed and found (at 58) that the Company's "oral assurances provided substantial context" for the campaign literature, that "oral and written statements must be construed together to determine their reasonable tendency to coerce the employees," and that "the literature and oral statements, considered as a whole, are lawful expressions of opinion protected by Section 8(c)."

Much in Member [later Chairman] Stephens' dissent is particularly applicable to the facts of the present case in which both the speeches and campaign literature are alleged to be objectionable. He wrote (287 NLRB at 60-62) that

. . . on viewing the documents in toto—as the [employer] undoubtedly intended the employees to view them . . . I conclude that they go well beyond "[m]ere references to the possible negative outcomes of unionization." Rather they make *veiled suggestions of plant closure and job loss* [emphasis added] that are unlawful under the test set out in [*Gissel*]; and they suggest that any improvements in the employees' working conditions once the [union] is voted in will bear the price of a "union-forced strike."

. . . .  
[The company] had no evidence of what the [union's] bargaining position would be . . . [and] a reasonable inference was that [the employer] might close a plant simply because it did not want to operate a unionized plant. . . . The [company] had previously suggested . . . where it might send the work of the employees whose jobs were thus destroyed—to its non-union plants in four other States, who would be "glad to get our work." These assertions are not the kinds of "carefully phrased" predictions based on "objective fact to convey an employer's belief as to demonstrably probable consequences *beyond his control*" which the Court in *Gissel* regarded as mere truthful communication under Section 8(c). . . . Rather these statements carry the "implication" that were the employees to select the [union] as their bargaining representative, the [company] might close the plant and transfer out jobs "solely on [its] own initiative for reasons unrelated to economic necessity"—statements of the kind that the *Gissel* Court regarded as implicit threats of retaliation, in violation of Section 8(a)(1) of the Act.

In *TRW-United Greenfield Division*, 245 NLRB 1135 fn. 1, 1144 (1979), a case cited in the Company's brief (at 29) on another point, the operations manager made a statement that "we had two UAW plants which we had to close down because they were no longer economical to operate." The Board held that "we agree with the Administrative Law Judge's finding that the statement was coercive and objectionable because [the manager] gave the false impression that the [union] was responsible for the plant closings."

In *BI-LO*, 303 NLRB 749, 750 (1991), enfd. 985 F.2d 123 (4th Cir. 1992), the Board held: "We affirm the judge's finding that the [company's] February 1, 1988 mass mailing to employees and its subsequent use in election campaign discussions with employees violated Section 8(a)(1) by implicitly threatening to close the Havre de Grace store if employees voted for union representation." The Board found:

The document in question consisted of a cover letter and reprints of 18 newspaper articles about store closings and/or employee job losses. Collectively, this literature was not restricted to conveying the legitimate message that a union could not guarantee job security against general economic adversity. Instead, it strongly suggested that Havre de Grace employees now had job security and that they would jeopardize this security if they chose to be represented by the [union]. Indeed, the cover letter stated, "Our constant effort to see that you have a steady job is one of the many reasons you should vote NO UNION on election day." It thereby implied that the [company's] "constant effort" to provide job security might be abandoned if the employees voted for union representation.

Concededly, some of the attached newspaper articles indicate that the [union's] economic actions had been a factor leading to the closing of other employers' stores. The majority of the articles, however, fail to identify union activity as a cause of store closings. In sum, these articles fail to provide the necessary objective basis for the [company's] implicit claim that unionization would imperil employee job security for reasons beyond its control. Absent such a basis, the February 1 mass mailing and the followup usage of it reasonably tended to threaten employees with the [company's] willingness to close the Havre de Grace store if employees voted for the [union].

In a recent case, *Shelby Tissue*, 316 NLRB 646 (1995), the Board adopted a hearing officer's finding that Ray Guenin, the general manager, engaged in objectionable conduct during an election eve speech in which he "repeatedly implied, without objective foundation, that a vote for union representation would inevitably lead to plant closure." The Board further held:

In addition to those statements by Guenin which the hearing officer specifically underscored in his opinion, we note the same coercive implication in Guenin's reference to the fate of another company's mill. He stated, "The Paperworkers represented 1200 people at [the other] mill. Now there's only 650 left and they are going to be out of a job." Guenin offered no objective evidence that the Paperworkers had done anything to cause or to exacerbate problems at the [other] mill.

On the other hand, the court ruled in *NLRB v. Pentre Electric*, 998 F.2d 363, 368-371 (6th Cir. 1993), that truthful, objective statements to employees by officials of a nonunion contractor on matters over which they had no control met the Supreme Court's *Gissel* standard and were protected under Section 8(c).

One official told employees that many of the customers did not employ union contractors and that "if we were union contractors we would not have had the three large jobs we were doing with those people." The other official explained that "some of our very good companies were very involved in the open shop industry. . . . So, it would be difficult to maintain those particular customers if we were a union contractor and then if we were a union contractor, we'd have to establish new customers." The court held that the Board

“bears the burden of demonstrating that an employer’s statement is unlawful, either because it is not objective in nature or because it is untruthful.”

In *Patsy Bee, Inc. v. NLRB*, 654 F.2d 515, 517–518 (8th Cir. 1981), the president of a nonunion company discussed its precarious financial status with the employees and told them that based on the established policies of Jantzen and Artex (two key customers) against contracting with union companies, he believed they would refuse to do business with it if the employees unionized. After citing the *Gissel* requirement of “objective fact” and “demonstrably probable consequences,” the court held the president’s statements reflect his belief, “based upon objective facts, that unionization could have an adverse economic impact” and in these circumstances the statements were protected speech under Section 8(c).

Similarly in *Shenanigans*, 723 F.2d 1360, 1364, 1367–1369 (7th Cir. 1983), the court held that the prediction the co-owner of a restaurant in Decatur, Illinois made in a speech to employees that his company would fail if it was unionized met the *Gissel* requirement that “the prediction must be carefully phrased on the basis of objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control.” The co-owner told the employees that he believed the restaurant business in Decatur was too fragile for a restaurant to survive if it paid union wage scales, pointing to the fact that only one restaurant in Decatur was unionized and it was doing badly.

In its opinion in that case, however, the court distinguished, as follows (723 F.2d at 1368–1369), other cases in which the predictions were not protected under Section 8(c):

*NLRB v. Kaiser Agricultural Chemicals*, 473 F.2d 374, 381 (5th Cir. 1973), where “The employees could reasonably have inferred that these events [a litany of horrors, including strikes, plant closings, and loss of benefits] would result not from the inevitable forces of the market, but from the deliberate acts of the company taken in reprisal”; and *Gissel* itself, where “the Board could reasonably conclude that the intended and understood import of [the message conveyed by a whole series of company speeches, pamphlets, leaflets, and letters] was not to predict that unionization would inevitably cause the plant to close but to threaten to throw employees out of work regardless of the economic realities,” 395 U.S. at 619, 89 S.Ct. at 1943.

## 10. Concluding findings

### a. Ignored Supreme Court standards

The Company employs over 900 employees in the three seashore towns. As the evidence shows, it engaged in an election campaign that was obviously intended to create an atmosphere of fear of loss of jobs—through strikes, job transfers, or plant closures—at the Oscoda, Tawas City, and East Tawas facilities if the employees voted for union representation.

The principal question is whether the Company’s loss-of-jobs campaign theme in its speeches, literature, and conduct was, under the Supreme Court *Gissel* standards, protected under Section 8(c) of the Act.

Contending in its brief (at 27–28) that Section 8(c) permits an employer to present its views regarding unionization, the Company cites only two sentences from the *Gissel* opinion (395 U.S. at 618):

[A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a “threat of reprisal or force or promise of benefit.” He may even make a prediction as to the precise effect he believes unionization will have on his company.

This excerpt from the opinion omits the following essential qualifications of that 8(c) right (395 U.S. at 618–619):

In such a case, however, the prediction must be *carefully phrased* on the basis of objective fact to convey an employer’s belief as to *demonstrably probable consequences beyond his control* . . . if there is any implication that an employer may or may not take action *solely on his own initiative for reasons unrelated to economic necessity and known only to him*, the statement is no longer a reasonable prediction based on available fact but a *threat of retaliation based on misrepresentation and coercion*. . . . [c]onveyance of the employer’s belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, *which is most improbable*, the eventuality of closing is capable of proof. . . . an employer is free only to tell “what he reasonably believes will be the *likely economic consequences of unionization that are outside his control*,” and not “threats of economic reprisal to be taken solely on his own volition.” [Emphasis added.]

Establishing these standards for an employer’s lawfully communicating his views to employees, the Supreme Court held (395 U.S. at 617), as quoted above, that “balancing” the employer’s 8(c) rights with the employees’ right to self-organization must take into account the economic dependence of the employees on their employers and the “necessary tendency” of the employees, because of that relationship, “to pick up intended implication” of the employers that “might be more readily dismissed by a more disinterested ear.” The Court further observed (895 U.S. at 619–620) that “the Board has often found that employees, who are particularly sensitive to rumors of plant closings, take such hints as coercive threats rather than honest forecasts” (footnotes omitted).

The Company ignores these qualifying standards in balancing the employer’s 8(c) right with the employees’ right to self-organization.

### b. No objective foundation for predictions

The evidence is clear that here, the Company made veiled predictions of strikes, job transfers, plant closure, and loss of jobs that were not “carefully phased on the basis of objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control,” as required in the Supreme Court’s *Gissel* standards.

In none of the Company’s extensive campaign literature (93 leaflets, 160 pages) warning employees of strikes if they

voted for union representation, or in its campaign speeches about strikes, job transfers, and plant closures, did this employer make any objective statement of “what he reasonably believes will be the likely economic consequences of unionization that are outside his control” and not taken “solely on his own volition.”

This is not a case, such as *NLRB v. Pentre Electric*, above, 998 F.2d 363 (6th Cir. 1993), in which a nonunion contractor made truthful, objective statements about losing its three large nonunion jobs and the difficulty in maintaining the nonunion customers who “were very involved in the open shop industry.” Nor *Patsy Bee, Inc. v. NLRB*, above, 654 F.2d 515 (8th Cir. 1981), in which the president of a nonunion company, which was in a precarious financial condition, told employees that its two key customers had an established practice against contracting with union companies and that he believed they would refuse to do business with it if the employees unionized. Nor *Shenanigans*, above, 723 F.2d 1360 (7th Cir. 1983), in which the employer told employees he believed the restaurant business in the city was too fragile for a restaurant to survive if it paid union wage scales, pointing to the fact that the only union restaurant was doing badly.

Here the three facilities were a thriving, expanding part of the Company’s fluid handling business, having added over 250 employees to the payroll during the year before the March 30 election. As Division President Iorio pointed out in his March 28 speech at all three facilities, “We have the necessary ingredients for survival here. We have an excellent work force in both hourly and salary.”

The Company nowhere asserted as an objective fact that the Big Three (unionized) auto companies would refuse to do business with it if the employees selected the Union, that the Union would demand wages and benefits that would make the plants unprofitable or the products noncompetitive, or that the Union would make “unreasonable” demands, causing a strike. There is no evidence of what the Union’s bargaining position would be.

Yet, Iorio spoke in the written speech about “*viability* [emphasis added] of our plants in Tawas City, East Tawas, and Oscoda,” an ominous implication that the very survival of the three plants was at stake. He then referred to the transfer of jobs to “our growing operation in Mexico” and to “moving product from one plant to another,” pointing out that “the Company makes this determination” where its products will be produced.

Iorio also stated, “I know the UAW made you a lot of promises because they always do” and referred to three UAW strikes (two in 1976 and 1990 at ITT plants and one in 1986 at another employer), which the Company had described in 122 pages of campaign literature. He then stated: “Look at our own ITT Automotive plants of Ithaca, Rochester and Williamston all in Michigan, all closed and all affecting hundreds of former UAW members [implying, without asserting as an objective fact, that UAW was responsibility for the closings].”

In an earlier speech corporate official Davies, manager of Fluid Handling Systems, told employees at the East Tawas plant that he had closed three plants when the Union came in and the Company did not make a profit, implying that the Union was responsible for all three closings. When an employee asked if it was not true that he closed one of the

plants because the plant was merged with another plant, Davies admitted this was true.

As discussed above, the Board agreed with the judge in *TRW-United Greenfield Division*, above, 245 NLRB 1135 (1979), that the operations manager’s statement that the employer closed two UAW plants because they were no longer economical to operate was coercive and objectionable because the manager “gave the false impression that the [union] was responsible for the plant closings.” Similarly in a recent case, *Shelby Tissue*, above, the Board specifically held that the general manager’s statement—that “The Paperworkers represented 1200 people” at a mill and “Now there’s only 650 left and they are going to be out of a job—was a coercive implication of the fate of the mill, the manager having offered no objective evidence that the Paperworkers had done anything to cause or to exacerbate problems” at the mill.

Davies told employees at the Oscoda facility that he could show them three plants “where the [union] got in and the Company did not make a profit and he shut them down” and warned that “just because we had big equipment and a new expansion in Oscoda, not to think that he wouldn’t shut that one down” (if it became unprofitable). As indicated, there is no evidence of what the Union’s bargaining position would be, and the Company did not assert as an objective fact that the Union would demand wages and benefits that would make the plants unprofitable.

George Treglown, the human resources manager, told employees that the Union came in at different places where he had worked and the plants closed—without asserting as an objective fact that the Union was responsible for the closings.

On March 27 (3 days before the election) Gale Spallinger, the general plants manager of ITT Automotive North America, sent the employees a letter, accompanied by four leaflets concerning strikes dating as far back as 1976. The letter states that “we have increased enrollment by over 250 employees” at the three Iosco County facilities in the last year and that “ITT has shown its commitment to you and Iosco County by adding meaningful jobs and stability,” and “Our working together has made our plants a success.” In *BI-LO*, above, the employer sent employees a mass mailing, consisting of “a cover letter and reprints of 18 newspaper articles about store closings and/or employee job losses.” The Board found that this literature “strongly suggested” that the “employees now had job security and that they would jeopardize this security if they chose to be represented by the [union].”

In Iorio’s March 28 speech, he gave no assurance that the Company would bargain in good faith if the Union was selected. He spoke only of a breakdown in bargaining when the Company says “No.” Without any evidence of what UAW’s bargaining position would be, he told the employees, “I don’t know what this union would do when we say ‘No’ to demands we consider unreasonable”—stating that in some negotiations the Union has called a strike, resulting in permanent replacements or plant closure. He warned, “DON’T—LET IT HAPPEN HERE.”

As the Supreme Court held in its *Gissel* decision, the “[c]onveyance of the employer’s belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof.” Here,

the Company has provided no indication that the eventuality of closing is “capable of proof.”

*c. Statements not protected by Section 8(c)*

In *NLRB v. Shenanigans*, above, 723 F.2d at 1360, the court’s following reference to distinguishable cases in which predictions were not protected under Section 8(c), is applicable here (brackets in original):

*NLRB v. Kaiser Agricultural Chemicals*, 473 F.2d 374, 381 (5th Cir. 1973), where “The employees could reasonably have inferred that these events [a litany of horrors, including strikes, plant closings, and loss of benefits] would result not from the inevitable forces of the market, but from the deliberate acts of the company taken in reprisal”; and *Gissel* itself, where “the Board could reasonably conclude that the intended and understood import of [the message conveyed by a whole series of company speeches, pamphlets, leaflets, and letters] was . . . to threaten to throw employees out of work regardless of the economic realities,” 395 U.S. at 619, 89 S.Ct. at 1943.

Having found that the Company made veiled predictions of strikes, job transfers, plant closure, and loss of jobs that were not “carefully phased on the basis of objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control,” as required in the Supreme Court’s *Gissel* standards, I find that the predictions were not protected by Section 8(c) of the Act.

I therefore find, particularly in this context, that Division President Iorio’s March 28 speech, which in itself was a veiled prediction of job losses from strikes, job transfers, or plant closure without objective foundation, was coercive and interfered with the employees’ exercise of their Section 7 rights, violating Section 8(a)(1).

I sustain the Union’s Objection 2 (G.C. Exh. 1(p), p. 7) that the Company “Conducted a campaign of fear and intimidation through constant predictions of violence, strikes, loss of customers and economic detriment which the employer insinuated would inevitably result from a union victory” and find that the Company interfered with the employees’ free choice of representation.

*d. Impression of bargaining futility*

The complaint alleges that the Company about March 1995, by its agent George Treglown at the Oscoda plant, told employees that it would be futile for them to select the Union as their bargaining representative.

The Union’s Objection 5 (G.C. Exh. 1(p), p. 7) similarly alleges that the Company “Created the impression of bargaining futility.”

As found, Human Resources Manager Treglown told employees in a speech that if the employees voted the Union in, they “would probably have to go the Detroit to negotiated a contract,” that the negotiating committee members “would not be receiving any pay from the Company or the Union,” that “the Company would bargain hard,” and that the employees “would get frustrated because we were getting no pay and things would disintegrate [meaning the “whole negotiating process”].

Treglown made this speech in the context of a March 6, four-page “GET ALL THE FACTS” leaflet, which states in part that “ITT Automotive is not going to give in to unreasonable demands” and “The only thing [UAW] could do about it is STRIKE.” The leaflet also states: “The Company would bargain in good faith. But we would bargain very hard! You have no guarantee that you would end up with as good a wage and benefit package as you have now!”

As found, this bargaining statement is the Company’s only indication—in all its extensive campaign literature (93 leaflets containing 160 pages) warning about strikes—that it was willing to engaged in good-faith bargaining. It was accompanied not only by the emphasized warnings that it would bargain “very hard!” and employees may not “end up with as good a wage and benefit package as you have now!” but also by the statement about “unreasonable demands.” None of the literature reveals any unreasonable demands that UAW had made or was likely to make, causing a strike.

Therefore, as further found, this good-faith bargaining statement reasonably tended to convey to employees the following message. The Company may regard any proposed improvement in the present wage and benefit package to be an “unreasonable” demand, giving the employees no alternative to risking their jobs by going on strike for any improvement.

Treglown’s speech was made in the context of Division President Iorio’s March 28 speech, in which Iorio gave no assurance that the Company would bargain in good faith, but spoke of a breakdown in bargaining when the Company says “No” to “demands we consider unreasonable”—stating that in some negotiations the Union has called a strike, resulting in permanent replacements or plant closure.

I find that in the context of the Company’s extensive campaign literature warning about strikes, the “GET ALL THE FACTS” leaflet, and Iorio’s March 28 speech, Treglown’s speech reasonably created the impression of bargaining futility.

I therefore find that Treglown’s statements about the futility of selecting the Union was coercive and violated Section 8(a)(1).

I sustain the Union’s Objection 5 regarding bargaining futility and find that the Company further interfered with the employees’ free choice of representation.

*B. Other Coercive and Objectionable Conduct*

*1. Antiunion buttons*

It is well established, as held in *A. O. Smith Automotive Products Co.*, 315 NLRB 994 (1994), that an employer violates Section 8(a)(1) when its supervisors distribute campaign paraphernalia in a manner pressuring employees to make an observable choice or open acknowledgment of their union sentiments because this “effectively put[s] employees in the position of having either to accept or reject the [employer’s] proffer.”

Theresa Whalen, a machine operator at the East Tawas plant 3, credibly testified that Shift Supervisor Tony Orlando approached her in the plant on March 29 (the day before the election) and asked, “Hey, Theresa, where’s your button.” She answered, “I didn’t get one.” He said, “Well, come on over to my desk and I’ll hook you up with one.” There he gave her a “Vote No” button. (Tr. 69–70.)

Later that day when employee Sherry Spalding noticed the button, Whalen explained “the reason I had [the button] was the conversation I had with Tony Orlando” and denied that she was a traitor to the Union (Tr. 71).

At the Oscoda facility, as employee Pardonnet credibly testified, she saw supervisors handing out antiunion buttons. About 2 or 3 weeks before the election, Pardonnet saw Shift Supervisor Daniel VonZynda with a plastic bag of antiunion buttons. With Pardonnet nearby, VonZynda called employee Mike Varney over and asked if he wanted any of the buttons. Varney said yes and VonZynda gave him some. (Tr. 201–202.)

About a month before the election, Pardonnet was in the reject cage near Floor Supervisor Lawlor’s desk. Lawlor “called [employee] Loretta Warren over and wanted to know if she wanted to wear one of the antiunion buttons. Warren said, no, that she wasn’t wearing any pins and turned around and walked off.” (Tr. 202.)

Whalen, as well as Pardonnet, impressed me as a truthful witness. I discredit the denials of their testimony.

In each of the three incidents, the supervisor effectively put the employee in the position of having either to accept or reject the Company’s proffer of the antiunion button, thereby pressuring the employee to make an observable choice or open acknowledgment of the employee’s union sentiments.

I therefore find that the Company coercively interrogated employees about their willingness to wear antiunion buttons to indicate that they would vote against the Union, in violation of Section 8(a)(1).

I sustain the part of the Union’s Objection 1 (G.C. Exh. 1(p), p. 7), alleging that the Company made the antiunion insignia available to employees, forcing them to make known their preelection choices, and find that the Company further interfered with the employees’ free choice of representation.

## 2. Removal of union literature

Sherry Spalding, an employee inspector on the third shift, was “basically the only” employee putting union literature in the lunchroom at the East Tawas plant 3. She credibly testified that on one occasion in mid-February, when she was placing the literature on lunchroom tables, Shift Supervisor Bruce Curtis entered the lunchroom and said (contrary to his denial), “There’s Sherry cluttering up all my tables with her union literature.” Spalding, however, did not see Curtis remove any of the literature, either on this occasion or on any other occasion. (Tr. 131–132, 160, 701.)

Spalding continued to put out the union literature. She estimated that in the 6 weeks between this incident and the election, “I put out literature about 20 or 25 times.” (Tr. 170.)

Two other East Tawas witnesses, machine operator Philip Harris and operator Perry Shields claimed that about this same time in mid-February, they saw Curtis removing union literature from the lunchroom tables. They, however, gave such inconsistent accounts of what happened that I cannot rely on their testimony to support the General Counsel allegation that the Company disparately removed union literature from the lunchroom. (Tr. 54–56, 58–61, 65, 87–89, 95, 100–102, 109–116; R. Exhs. 1, 2.)

I note that Harris, who testified that the union papers would be stacked up in a “certain area on the table” and

that newspapers were scattered over the tables, conceded that “Usually a supervisor or manager would pick up newspapers and such, but they usually didn’t touch the union papers.” Concerning his inconsistent testimony, Shields testified that he had a “problem remembering at times.” (Tr. 61, 117.)

I find that the allegations that the Company disparately removed the union literature must be dismissed.

I overrule the Union’s Objection 6 (G.C. Exh. 1(p), p. 7), which alleges that the Company discriminatorily removed the union literature.

## 3. Election day conduct

### a. Managers observing voters

The Union’s Objection 4 (G.C. Exh. 1(p), p. 7) alleges that the Company, during

the election polling period, took up positions where employees going to the polls had to pass by and through massed throngs of supervisors and other high management officials. The employees going into and out of the polling area were under the scrutiny of these assembled management officials from their chosen observation area.

In *Performance Measurements Co.*, 148 NLRB 1657, 1659 (1964), the petitioning union alleged in an objection that the employer’s president “stood by the door to the election area so that it was necessary for each employee who voted to pass within 2 feet of him to gain access to the polls.” The Board found that “at various times [employer’s] president was in a position near the door employees were to use to enter the polling place, and that for a period of time he was seated at a table approximately 6 feet from such doorway.”

The Board held that “the continued presence of the [employer’s] president at a location where the employees were required to pass in order to enter the polling place was improper conduct” and that “by this conduct the [employer] interfered with employees’ freedom of choice in the election.”

Here, during the first and second polling sessions at the Oscoda facility where a majority of the unit employees work, as employee Pardonnet credibly testified, some supervisors and the following managers were “standing in a circle” where employees were “forced to go by” as they went to vote and where the managers could watch them “as they were standing in line to vote” (Tr. 228–230, 321; R. Exh. 8, p. 7):

James Grobbel, Director, Employee/Industrial Relations, Fluid Handling Systems, from the corporate headquarters in Auburn Hills, Michigan. James Estes, Personnel Manager for the Oscoda, Tawas City, and East Tawas plants.

Robert Sharp, Plant Manager at the Oscoda facility.

Richard Karbowski, General Supervisor of Oscoda Assembly.

Grobbel, Estes, and Sharp did not testify. Karbowski admitted that Grobbel was present in the Oscoda facility on March 30 (Tr. 626).

The polling place was in the conference room on the second-floor mezzanine on the west side of plant 6. The main north-south aisle in the center of the facility connects plant 6 through overhead doors with plant 5 to the north and with plant 7 and plant 4 to the south. The voters from all four plants reached the conference room by going from the main aisle, along the east-west aisle leading to the lunchroom, and left to the stairs. They lined up on the stairs and on the balcony while waiting to enter the door to the conference room. (Tr. 229–230, 382–386, 439–440, 555; C.P. Exh. 6.)

Thus the employees at the first and second voting sessions on the morning of March 30 were required to go by the managers standing in a circle near the intersection of the main and lunchroom aisles. While the employees were waiting at the top of the stairs and on the balcony outside the door to the conference room, they were in clear view of the managers. (Tr. 229–230, 321, 469, 545.)

Pardonnet gave the following account to the Company's counsel when they took her statement on May 10 in preparation for trial (G.C. Exh. 3, pp. 8–9; R. Exh. 9, p. 3):

On election day there were five to six managers and supervisors and other salaried employees who formed a circle in the main aisle near the center of the building. . . . election started at 5:30 a.m. During the morning of the election I was keeping an eye on the persons in the circle. For about 3 hours, I went to vote, to the restroom 3 or 4 times, and took my breaks and those persons were still standing in the circle. However, the persons standing in the circle would change from time to time. . . . The circle was formed in the main aisleway in the center of the plant. The circle previously described was [not] near the polling place. However, employees on the second floor balcony waiting to vote could see the entire plant and the circle of salaried employees. . . . I know the employees standing on the second floor balcony were intimidated by the presence of the salaried employees in the center of the building.

First-shift employee Scott Mead was working in plant 6 in open view of the intersection of the main and lunchroom aisles, where “Anybody that had to vote had to walk by.” There is no supervisor's desk anywhere in that area. The plant 6 supervisor's desk is about 50 or 60 feet south of the intersection, near the main aisle and the overhead door leading to plant 7. (Tr. 438–441, 461–462; C.P. Exh. 6; R. Exh. 19.)

When Mead went to vote that morning, as he credibly testified, he saw Plant Manager Sharp and General Supervisor Karbowski standing “near the intersection” and, “In fact, I almost crushed right into Bob Sharp.” Mead did not “remember who all was congregating” there, “other than the two.” Later, when waiting on the stairs about 40 feet from Sharp and Karbowski, “I had eye contact with Bob Sharp.” (Tr. 441–442, 465.)

By their demeanor on the stand, both Mead and Pardonnet impressed me most favorably as truthful, forthright witnesses, doing their best to give accurate accounts of what happened.

Pardonnet voted in the first session for third (night) shift employees. She was the union observer at the second voting

session that morning for first-shift employees (day). Three different employees then told her when they came up to vote, “Brandy, management is standing down there in a circle again.” On cross-examination she further testified: “You can't imagine how intimidating a bunch of managers are in the middle of the floor when you're going up for a secret ballot for your company.” (Tr. 326, 328, 331.)

That afternoon, as second-shift employee Wayne Yoesting credibly testified, it seemed that “we were overrun with supervisors.” Some first-shift supervisors who “usually leave” after their shift had remained, and employees commented to him that “there must be a convention going on.” (Tr. 394, 403.)

Working in plant 7 that afternoon, Yoesting saw that when first plant 4 and then plant 7 employees went to vote, supervisors were standing in the main aisle “around in this whole area between” plants 6 and 7. He did not see where the supervisors were standing when plant 5 and 6 employees were going to vote. (Tr. 385–389, 392–394.)

#### b. *Misleading defense*

In its defense at the trial, the Company presented evidence that I find was deliberately misleading.

Before General Supervisor Karbowski took the stand as a defense witness, the Company had plant photographs taken. With Karbowski standing on the balcony, the photographer took the photographs from angles that concealed the intersection of the main and luncheon aisles where the managers were standing in the path of the employees going to vote during the two morning voting sessions. (Tr. 548, 559.)

Two of the photographs (R. Exhs. 18, 20) were taken from a position near the supervisor's desk on the south side of plant 6. Both photographs show what Karbowski called “our east-west aisle” that “goes to our west dock door.” It is not the aisle to the lunchroom where the employees walked past the managers to the polling place. This “aisle,” which is about 50 or 60 feet to the south of the lunchroom aisle, leads from the main aisle and the supervisor's desk alongside a stack of cardboard to the west dock door. A third photograph (R. Exh. 19), also taken from a position south of the lunchroom aisle, shows the main aisle, the supervisor's desk near the overhead door to plant 7, and the stairs, but no part of the lunchroom aisle. (Tr. 543–545, 549, 556–559.)

There was no testimony or contention that Karbowski and the managers on the morning of March 30 were standing near the supervisor's desk. Instead, they were standing at the center of plant 6 about 50 or 60 feet to the north, near the intersection of the main and lunchroom aisles.

When called as a defense witness, Karbowski testified that at the time of the election, the stack of cardboard was 12 to 14 feet high, obstructing the view from the supervisor's desk to the stairs—but not claiming that the cardboard obstructed the view from the intersection of the main and lunchroom aisles to the stairs. Then, answering the company counsel's questions, Karbowski denied standing at any time during the March 30 election *in this area near the supervisor's desk* with Plant Manager Sharp for “30 minutes or more,” for “15 or 20 minutes or more at one time,” or for “an hour, hour and a half.” (Tr. 546–549, 553–554, 559.)

Karbowski gave the following further denial (Tr. 563):

Q. BY MR. MACK: Now . . . you've testified regarding where the supervisor's desk was, at any time during the day on March 30, did you observe three, four, five, or six supervisors standing around *in that area* not performing any work. [Emphasis added.]

A. No, sir.

Karbowski later testified that what he had called "our east-west aisle" was not an aisle, but was for hi-lo (forklift) traffic hauling cardboard in and stacking it (Tr. 561-562). On cross-examination he admitted that it was not used by the employees as a pathway to go vote and that the lunchroom aisle used by the employees was "about 60 feet" from the supervisor's desk (Tr. 601-604).

Yet the Company argues in its brief (at 13, 53):

Supervisors could not have seen who was standing on the stairs waiting to vote as the stairs were obstructed by a pile of cardboard stacked in front of the stairs.

. . . . Mr. Karbowski credibly testified that supervisors could not see the employees standing on the stairs in line to vote because the view of the stairs leading to the voting area was obstructed by cardboard stacked in front of the stairs.

I find that the misleading evidence in support of this argument amounts to a deliberate attempt at deception. I discredit Karbowski's other denials and reject this defense.

The Union contends in its brief (at 21):

It was impossible for the employees not to feel like they were "under the glass" while being observed by the people who have the power to make decisions that will affect their livelihood and that of their families. This atmosphere destroyed the laboratory conditions that are required by the Act to be free from interference.

Based on the Board's decision in *Performance Measurements*, above, 148 NLRB at 1659, I find that the "continued presence" of Director Grobbel from the corporate headquarters, Personnel Manager Estes, Plant Manager Sharp, and General Supervisor Karbowski "at a location where the employees were required to pass in order to enter the polling area," as well as from where they observed the employees while waiting at the top of the stairs and on the balcony outside the door to the polling place, did interfere "with the employees' freedom of choice in the election."

I therefore sustain the Union's Objection 4.

#### 4. Postelection threat to union observer

On March 31, the morning after the election, union observer Pardonnet approached General Supervisor Karbowski to congratulate him for the Company's victory in the election and said "We tried our best." As Pardonnet recalled at the trial, "He shook his finger right in my face" and said, "Lady, this is only the eleventh round," that "this company goes 15," and added: "Where are your God damn UAW protection now?" (Tr. 198-199.) I note that on March 31 Pardonnet recorded in the production notebook she kept at

work (R. Exh. 10 p. 47; Tr. 304), "This is round 11 & the Company goes 15 rounds. Dick [Karbowski] (very mad)."

As Pardonnet recalled in her May 10 written statement to the Company's counsel, Karbowski "said it is only the 11th round and this got [sic] damn Company goes 15. . . . see where your UAW friends are now. . . . He had a very angry mean look in his eyes." (G.C. Exh. 13, p. 1; R. Exh. 9, p. 1.)

According to Karbowski he told Pardonnet, "We knocked you out in the tenth round, we still got five more rounds to go yet," and she walked away. I discredit this version of what he said and his claim that he used the expression "five more rounds" as a figure of speech, referring to the "employees that voted for the Union" and "I figure we got a lot of work to do . . . to make them happy." (Tr. 571-575, 585; R. Exh. 32.)

I find that whether Karbowski referred to where Pardonnet's "UAW protection" or her "UAW friends" were then, after the Union's loss of the election, his statement about the 11th round and the Company going 15 rounds in that context clearly referred to her active role in supporting the union campaign.

I agree with the contention in the General Counsel's brief (at 9) and find that Karbowski's statement "on the day after the election is an overt threat of retaliation for her union activities and thus, constitutes a violation of Section 8(a)(1) of the Act." I also agree with the General Counsel's contention that this unlawful conduct is "highly relevant" to Pardonnet's later suspension.

#### 5. Suspension of union observer

##### a. *Discriminatory circumstances*

Since her employment in January 1988, Venita "Brandy" Pardonnet had never been accused of falsifying the amount of her production (Tr. 194-195, 332-341; R. Exhs. 13-15; G.C. Exh. 12, p. 32). On January 25, 1995 (before she became a union observer and less than 5 months before her suspension), Supervisor Denise Wilson wrote on her employee progress review (Tr. 749-750; G.C. Exh. 11):

Brandy is a good, hard worker who is very willing to do new jobs & help work the 'bugs' out of them. Keep up the good work.

On June 20 Pardonnet was working with employee Dorothy Gapuz, assembling and testing airline parts. (Gapuz, who was not disciplined, did not testify.) Pardonnet testified, "I know" that when she left early that day with Wilson's approval, she and Gapuz had reached the production quota of 800 parts. Pardonnet was certain because she remembered that they had four full boxes, each containing 150 parts (for a total of 600), and two partial boxes. "When we looked at our tags, we added up our tags, it came to 800." It is undisputed that Pardonnet reported 400 parts on her timecard and Gapuz signed a tag for 400 parts. (Tr. 211-216, 225, 228, 348-350, 762.)

That evening Pardonnet received a call at home from employee inspector Patricia Staubaum, who reported a missing box of parts. As Pardonnet credibly testified, this "floored me. I had no idea I had come up short a box of parts." Pardonnet's only explanation of what could have happened

was that there were two different jobs, the boxes were placed against two different walls, and after "Pat [Staubaum] came by and put her bar codes on them, started straightening the boxes up, we were short a full box after the bar codes were put on them." Before that, "We looked over there, the boxes were there, because I counted them and [Gapuz] counted them. The boxes were there." (Tr. 216–219, 224–225, 353–354, 359–361.)

The next morning, June 21, Pardonnet found Supervisor Wilson and "told her that I had a phone call and was told I had made a mistake in my counting." Wilson "said I would have to talk to Dick Karbowski about it." When she found Karbowski on the floor, he said "it was out of his hands, that [Plant Manager] Bob Sharp was handling it, and he would get ahold of me." (Tr. 219, 361.)

This was not the "standard procedure for investigating an employee incident." Karbowski admitted on cross-examination that in a "suspension type of incident," the supervisor would "notify me about an infraction." After going through the employee handbook to determine the severity of the charge, "I would recommend to the supervisor, one way or the other, suspension, or we'll work it out. . . . If it's a suspension, the supervisor will go down to the employee and explain the reason for suspension, until . . . we investigate further." (Tr. 580–581.)

Here on June 20, as Karbowski (but not Wilson) admitted, Wilson instead went directly to Sharp (who did not testify). The next morning when Karbowski returned to the plant, Wilson "addressed it with me, and we sat down with Mr. Sharp and went over this, to make sure that all bases were covered, that there wasn't something wrong." (Tr. 576.)

Before noon, June 21, as Pardonnet credibly testified, Sharp told her in his office with Wilson present that she had come up a box of parts short, that she had falsified her timecard, and that she was suspended indefinitely. Sharp said "They would get ahold of me after the investigation," and she left. Sharp did not ask her to explain her side of the matter. Neither did he ask how she could have made the mistake, or offer to let her review the records. (Tr. 220–221, 362, 369–370.)

Although Sharp promised an investigation, Wilson admitted that she made no further investigation after June 20. She claimed that yes, she thought "it's fair that Brandy Pardonnet was never allowed to tell her side of the story." (Tr. 750, 753.) To the contrary, Karbowski admitted that talking to the employee was an important element in determining what action to take, especially "where you were investigating an incident that may have been intentional" (Tr. 582).

When asked on cross-examination if he contended in open court that Pardonnet had intentionally misreported the amount of parts on her timecard, Karbowski answered (Tr. 579):

A. Intentionally?

Q. Yes.

A. I don't know if I could say yes or no either way, but she did show it, and leave the plant early.

Yet Karbowski admitted that he was making the contention that Pardonnet "did it intentionally" and testified that he went to Personnel Manager Estes and Human Resources Director Treglown "to make sure they seen our facts," then

"I sat down with Mr. Sharp, and we discussed what we thought should be done about this. . . . We decided . . . this is a very serious violation, but we decided that it would be a suspension, instead of termination." (Tr. 577–578, 580.)

After giving this testimony, Karbowski took credit for the decision to suspend Pardonnet. He testified that yes, he knew that Pardonnet had been active on behalf of the Union, but testified no, her union support played no part in his decision to suspend her. (Tr. 578.)

On June 27 Sharp, with Karbowski and Wilson present, met with Pardonnet in his office. He said he had investigated the incident and in his opinion it was "intentional," but he was giving her the benefit of the doubt and that she could come to work the next day. Sharp, like Karbowski and Wilson, never asked for Pardonnet's version of what happened. (Tr. 221–222.) At the time, Pardonnet wrote in her production notebook: "Suspended. Meeting with Bob Sharp, Dick [Karbowski]. Bob said I did it intentionally (on purpose). Was investigated?? Gave me benefit [of doubt]. . . . What a joke!" (R. Exh. 10, p. 92.)

On June 28 Wilson gave Pardonnet a notice of disciplinary action. The Notice shows no previous violation within 12 months. It has a check mark before "1ST VIOLATION" and "FIRST WRITTEN WARNING." It states that she was suspended 6–21–95 for "Reporting false quantity of Production" and "may return to work 6–28–95." An attachment states that she will be given a 60-day probation period beginning 6–28–95 and that any violation of a serious nature in the 60 days "WILL RESULT IN YOUR TERMINATION." She signed "Under protest." (Tr. 363–365; G.C. Exhs. 14–15 and 12, p. 32.)

Wilson proved to be an untrustworthy witness. In support of the Company's decision to suspend Pardonnet, Wilson claimed on cross-examination that whether or not an employee's misreporting of production was "intentional" was not relevant, "not the way I understand it" (Tr. 744). She further claimed that no, it would not be important in deciding what action to take to know whether the person made an honest mistake or was intending to slip out early and get paid for it" (Tr. 760).

By her demeanor on the stand, Wilson impressed me as being a witness who was willing to give any testimony that might help the Company's cause. I cannot rely on her account of the investigation.

I note that on June 20 when Wilson made a written report of the incident, she did not recommend that Pardonnet be either suspended or placed on probation. Although Wilson denied at the trial (Tr. 741) that she had "considered maybe not even writing [Pardonnet] up at all," she had stated in the report (G.C. Exh. 16): "I will get with Dick [Karbowski] & let him know the situation to see what needs to be done (i.e., left early, write-up, nothing, etc.)." I deem the report persuasive evidence that when she made the investigation on June 20, she did not believe that Pardonnet had intentionally falsified the amount of her production.

I also note that Wilson admitted that no, she had "never had any trouble with" Pardonnet before, "not that I can recall" (Tr. 759–760).

The evidence does not support the Company's contention in its brief (at 77) that Pardonnet's "disciplinary action is consistent with the [Company's] past practice with respect to similar incidents." The only evidence of an employee being

suspended and given a 60-day probation for a first offense of reporting the wrong amount of production involved employee Kristine McDonald, who “admitted to [Karbowski] and Denise Wilson that she knowingly added 200 parts to her timecard because as she stated [she] had to get out early that she had something to do” (G.C. Exh. 10; R. Exh. 36).

Employee Timothy Zech, however, was given only a first written warning although he “reported a false quantity of parts [after] he removed first shift tag and replaced it with his own” (G.C. Exh. 3).

#### b. Previous discrimination

Challenging Pardonnet’s credibility, the Company introduced evidence that instead reveals its previous discrimination against her.

The Company contends in its brief (at 65) that Pardonnet “confused fact with fiction” in her testimony. In support of this contention, the Company alludes to (without quoting) the following in Pardonnet’s May 10 statement that Company Counsel Mack, in the presence of Counsel Harris, took from her in preparation for trial (G.C. Exh. 13, p. 7; R. Exh. 9, p. 3):

During the campaign I had a book in which I wrote down my job and work. During the campaign I would write down incidents relating to the union and the election. I wrote the incident down as soon as it happened. I write the incident down to the best of my recollection. I still have the book at home. To date no one has made any changes in my books.

Concerning this statement, the Company refers in its brief (at 65) to part of what Pardonnet stated in her July 12 pre-trial Board affidavit—but omitting the following emphasized part (R. Exh. 8, p. 6):

Harris asked me how I remembered everything so well. I told him that I wrote everything down in my book. He asked me what book. I said that it is a book that more experienced operators keep of their pay rate and your actual hours worked and if there are any problems on the job. . . . *Curtis asked me what I wrote down in it. I told him that I wrote down our rated hours, our actual hours, problems on the job and since the union effort started I wrote down any problems or notes to myself.*

The Company then cites (at 65 fn. 20) Pardonnet’s three production notebooks that it introduced in evidence (R. Exhs. 10–12), argues that Pardonnet did not write “everything down in her book,” and asserts: “More specifically, [the Company’s] review of Ms. Pardonnet’s books disclosed that over a three year period, Ms. Pardonnet made a handful of references to the union campaign or to any other incident relevant to the hearing.”

Pardonnet’s notebooks contain not only notes concerning the Union’s organizing campaign and the Company’s antiunion campaign, but also notes to herself about “problems on the job.” Some of these notes and testimony that the Company elicited at the trial reveal how the Company discriminated against Pardonnet before it signed the June 3, 1994 settlement agreement in the four earlier cases.

As discussed above, the settlement agreement does not include a nonadmission clause, but instead provides in a reservation clause that the Board may rely on evidence obtained in the investigation of the case in making findings of fact or conclusions of law. The notice that the Company posted states in part that the Company WILL NOT (f) maintain or enforce any rules that prohibit “posting union literature on employee bulletin boards” or (g) “restrict our employees’ conversations, restrict their mobility or monitor their activities more closely because of their support for the UAW.”

Pardonnet’s 1993 production notebook (R. Exh. 11) shows that the union campaigning began in September of that year.

September 23 (p. 87), Pardonnet noted, “Union button 1st day.”

September 30 (p. 90), “Per Dick [Karbowski]. Carrol said designated work area no talking.”

October 6 (p. 93), “1:00 meeting time.”

October 7 (p. 93), “Told *couldn’t be on floor until 6:20*. Jim Mills per Dick.” October 8 (p. 94), “*Can’t come on floor until 6:20 a.m.* per Dick.”

October 11 (p. 95), “*Carrol told Phil couldn’t talk to me*” and “*Phil told Bill not to talk to me.*”

October 13 (p. 96), “Conversation with Richard [Karbowski]. [Floor Supervisor Sandra] *Sandy* [Lawlor] *wouldn’t leave*” and “ITT lawyers meeting supervisors.”

October 14 (p. 97) “Wore T-shirt UAW” and “By [Floor Supervisor Louis] Lou [Campbell]. *Left work area without permission per Dick.*”

October 19 (p. 98), “Grobber meeting 1:00.”

December 13 (p. 117), “Took leaflet of support to Bob Sharp. Jim Estes brought back. *Said no way. Come to office by appointment.*” [Emphasis added.]

Pardonnet’s 1994 production notebook (R. Exh. 12) is a weekly planner calendar, each two pages covering 7 days. It shows her notes concerning union and antiunion activity in the first part of the year before the election was postponed because of the earlier charges.

January 11 (p. 4), “Went to see NLRB in Tawas.”

January 14 (p. 4), “Got UAW posted.”

January 17 (p. 5), “*Asked Bob [Sharp] to sign UAW flyer. Took. Never gave back.* Ralph Iorio was here.”

January 21 (p. 5), “Meeting 1:45.”

January 28 (p. 6), “Gave Denise [Wilson] flyer. *Wouldn’t post.*”

February 6 (p. 7), “Petition sent in. *Can’t walk around. Questioned what I’m doing.*”

February 7 (p. 8), “Bob Sharp *won’t sign Flyer.*”

February 11 (p. 8), “Meeting.”

February 21 (p. 10), “Meeting.” [Emphasis added.]

Pardonnet gave the following explanation on cross-examination (Tr. 301–302):

Q. Do you recall making any specific recordings in your books about a misdeed by the company against you because of your involvement with the union?

. . . .

BY MR. MACK: What were they and can you point them out to us? I didn’t find any in there, ma’am.

A. Not being able to go to the bathroom without being asked, not being able to go over a yellow line, having to ask the supervisor when I could go, when I could leave, not being able to go into a different plant, not being able to talk to more than two people at one time.

The Company's actions against Pardonnet before the settlement agreement are not alleged in this proceeding to be unlawful.

Pardonnet's 1995 production notebook (R. Exh. 10) shows notes before and after the March 30 election, until her suspension and probation, and when she quit.

February 6 (p. 20), "Meeting Jim Estes, Dick [Karbowski], George [Treglown]."

February 8 (p. 21), "Meeting."

February 23 (p. 29), "Dick confronted me with Danny V. and Ed Klenow about hiring people because Union froze it."

March 23 (p. 43), "George [Treglown] meeting."

March 31 (p. 47), "This is round 11 and Company goes 15 rounds. Dick [Karbowski] (very mad)."

May 10 (p. 68), "ITT lawyers [taking statement]."

June 20 (p. 88), "800 parts" and "Wrong count on day Pat called."

June 21 (p. 89), "Suspended at 12:00 noon."

June 27 (p. 92), "Suspended. Meeting with Bob Sharp, Dick [Karbowski]. Bob said I did it intentionally (on purpose). Was investigated?? Gave me benefit [of doubt]. . . . a joke!"

June 28 (p. 92), "Had to sign write-up and probation papers in office under protest!"

October 9 (p. 130), "Quit" (Now employed at McDonalds, Tr. 194).

I find that Pardonnet's production notebooks do not detract from her credibility. I reject this and the Company's other challenges to her credibility.

In determining the Company's motivation for giving Pardonnet a 5-day suspension and placing her on probation for 60 days for a first offense, I have taken into consideration the apparent discriminatory actions taken against her before the settlement agreement. I have also considered (1) her service on the organizing committee; (2) her writing several articles to the Oscoda and Tawas newspapers; (3) her solicitation of union authorization cards; (4) her service as a union observer at the election (Tr. 196), as well as (5) Wilson's admission that "Brandy was a big union supporter" (Tr. 755); and (6) Karbowski's March 31 threat of retaliation for her union activities.

### c. Concluding findings

Particularly in view of the discriminatory circumstances discussed above and the rulings on credibility, I find that the Company seized on the reported missing box of airline parts as a pretext for retaliating against Pardonnet for her active support of the Union.

I therefore find that the General Counsel has carried his burden of proving that Pardonnet's protected union activity was a substantial and motivating factor in the Company's decision to suspend and place her on probation. *Wright Line*,

251 NLRB 1083 (1980). I further find that the Company has failed to meet its burden to prove that it would have suspended and placed her on probation in the absence of her union activity.

Accordingly I find that the Company discriminatorily suspended Venita Pardonnet for 5 days beginning June 21, 1995, and placed her on 60-day probation on June 28, 1995, in violation of Section 8(a)(3) and (1) of the Act.

### III. REPRESENTATION PROCEEDING

The petition in Case 7-RC-20273 was filed on February 11, 1994, and a Stipulated Election Agreement was approved on March 2, 1995. The Tally of Ballots in the March 30, 1995 election shows that there were 321 votes for and 503 against the Union, with 5 challenged ballots. The Union filed timely objections on April 6, 1995. (G.C. Exh. 1(p), p. 6.)

As found, the Company interfered with the employees' free choice of representation as alleged in the Union's Objections 1, 2, 4, and 5. Also as found, (a) Division President Iorio's March 28 speech, unlawfully predicting job losses from strikes, job transfers, or plant closure without objective foundation, (b) Human Resources Manager Treglown's statement about the futility of selecting the Union, and (c) the Company's interrogation of employees regarding the wearing of antiunion buttons were coercive and violated Section 8(a)(1) of the Act.

I therefore find that this conduct, which occurred during the critical preelection period, clearly interfered with the employees' free choice of representation and that the election must be set aside and a new election held.

### CONCLUSIONS OF LAW

1. By predicting the lost of jobs from strikes, job transfers, or plant closure without objective foundation, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By creating the impression of bargaining futility, the Company violated Section 8(a)(1).

3. By coercively interrogating employees about their willingness to wear antiunion buttons to indicate that they would vote against the Union, the Company further violated Section 8(a)(1).

4. The General Counsel failed to prove by credible evidence that the Company disparately removed union literature from the lunchroom tables.

5. Because the Company's conduct during the critical preelection period clearly interfered with the employees' free choice of representation, the March 30, 1995 election must be set aside and a new election held.

6. The Company on March 31, 1995, threatened retaliation against one of the union observers at the March 30 election for her union activities, violating Section 8(a)(1).

7. The Company discriminatorily gave the union observer, Venita Pardonnet, a 5-day suspension beginning June 21, 1995, and placed her on 60-day probation, violating Section 8(a)(3) and (1).

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease

and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily suspended an employee for 5 days, it must make her whole for any loss of earnings and other benefits, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The Respondent, ITT Automotive, a division of ITT Corporation, Oscoda, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Predicting the lost of jobs from strikes, job transfers, or plant closure without objective foundation if the employees vote for representation by the United Auto Workers (UAW).

(b) Creating the impression of bargaining futility if the employees vote for UAW.

(c) Coercively interrogating employees about their willingness to wear antiunion buttons to indicate that they would vote against the Union.

(d) Threatening to retaliate against any employee for engaging in union activities.

(e) Suspending or placing any employee on probation for engaging in union activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Venita Pardonnet whole for any loss of earnings and other benefits suffered as a result of her discriminatory suspension in the manner set forth in the remedy section of the decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to her unlawful suspension and probation, and within 3 days thereafter notify Venita

Pardonnet in writing that this has been done and that the suspension and probation will not be used against her in any way, including any request for reemployment.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facilities in Oscoda, Tawas City, and East Tawas, Michigan, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 19, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the election is set aside and Case 7-RC-20273 is severed from Cases 7-CA-37082(2), 7-CA-37367, and 7-CA-37367(2) and remanded to the Regional Director to conduct a second election when he deems the circumstances permit a free election.

<sup>2</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>3</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."